

# **TITLE II : KanCare and the ADA**

Olmstead and HCBS

By Anthony A. Fadale

State ADA Coordinator

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# **K.S.A. 58-1301b**

- Incorporates Title II of the ADA into State Statute.
- 201 through 205 Inclusive
- Also incorporates its Part 35 regulations
- Also Incorporates the Accessibility Guidelines

# Title II Of the ADA

- Focuses on all the States' programs, services and activities.
- Accessible to and usable by individuals with disabilities when viewed in their entirety
- Access must be meaningful- Chaffin

# Olmstead

- U.S. Supreme Court decided individuals with disabilities have the right to live in the community with appropriate supports and services
- 10<sup>th</sup> Circuit in Fisher v. Okla that an individual with disability need not be in institution before Olmstead applies
- Key: Risk of Institutionalization

# Olmstead

- Waiting lists are not prohibited
- State must have reasonable movement
- State is not intentionally keeping institution open
- Federal circuits look at if there is an comprehensive effectively working program in terms of integrating people into the community

# Undue Burden

- Olmstead compliance not required if it creates “undue financial or administrative burden”
  - Fundamentally alter a program service or activity
  - Very high standard
- Must still make accessible up to the burden

# KanCare and the ADA

- KanCare's Special Terms and Conditions ("STCs") No. 1 states that KanCare will comply with the ADA
- Person centered service
- People must be allowed access to a range of services in the community (IE employment or day activities)

# Medical Services

- Services available so that KanCare member is not at risk of institutionalization
- Example: Fisher case from Oklahoma
  - Members in community were capped at five (5)
  - Could have unlimited prescriptions if in a nursing home



# Medical Services cont'd

## ■ Fisher cont'd

- Oklahoma's financial crisis did not cause the provision of drugs in the community to be a "fundamental alteration"
- Public policy of keeping disabled in the community outweighed Oklahoma's need to control expenditures
  - Only a "short-term" burden

# Employment & Activities

## ■ Employment

- Integrated employment as first option
- Employment First/Summits
- MCO pilots
- WORK and Working Healthy

## ■ Activities

- Sporting events, movies
- Like nondisabled community members

# Accessible websites

- STC 43 requires KanCare website to be accessible to disabled
- ITEC Policy 1210
  - State, in turn, expects MCO websites to be accessible as well
- MCO can use State's Accessibility Management Platform (AMP) to ensure KanCare program pages are accessible
  - MCO sites will be evaluated using AMP

# Effective Communication

- <http://www.ada.gov/effective-comm.pdf>
- Rule 28 C.F.R part 35.160
- Consider several factors including but not limited to:
- What information is attempted to be communicated, length, and complexity.

# Other Issues you need to be aware

- Housing
- Emergency Management
- Transportation
- Guidance is being updated on these issues. I work with the various agencies on implementing it.

# Housing

- Make sure Consumers are in accessible housing
- I work with Housing Resource Corporation to assist in development of accessible Housing
- This commitment is shared with HCBS partners.

# New Transportation Regulation

- Allows for reasonable modifications of Policies practices and Procedures.
- <http://www.gpo.gov/fdsys/pkg/FR-2015-03-13/pdf/2015-05646.pdf>
- Appears it is an effort to have consistent regulation as is in Part 35 and Part 36 Takes effect in July 2015

# Olmstead Assistance

- Let KDHE and/or KDADS know of potential Olmstead issues so they can be properly evaluated/corrected.
- More in-depth training available upon request.



# Resources

- <http://eeoc.gov/laws/types/disability.cfm> EEOC Website
- <http://askjan.org/enews/2015/Enews-V13-I1.htm> Job Accommodation Network *(this is to the newsletter, not the accommodation page <http://askjan.org/soar/index.htm>.)*
- <http://admin.ks.gov/offices/personnel-services/policies-and-programs/ada> State ADA Coordinator